IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25312 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SOORAT JESSOMAL KHANCHANDANI - Petitioner(s)
Versus
GUJARAT SECONDARY AND HIGHER SECONDARY EDUCATION BOARD & 3 - Respondent(s)

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Appearance :
MS. JR ACHARYA for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 4.
MR AD OZA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 27/02/2007

ORAL JUDGMENT

1 In light of the view that the Court is inclined to take, the petition is taken up for final hearing and disposal today. **Rule.** Learned Advocates for the respondents are directed to waive service of Rule. As directed by this Court on 19.2.2007 the representative of respondent No.3 is personally present in the Court.

2 This petition has been filed praying for following reliefs :

> *"(A) Your Lordship may be pleased to admit and allow this petitioner and writ of mandamus or in the nature of writ of mandamus may be issued against the respondent;*
>
> *(B) Your Lordships may be pleased to direct the respondent to issue the fresh mark sheet and examination certificate on the ground of the passport and my affidavit having correct name of the Soorat in the place of Suratmal.*
>
> *(C) Your Lordships may be pleased to grant any other and further reliefs that may be deemed fit and proper in the facts and circumstances of the petition and in the interest of justice".*

3 The brief facts necessary for the present are : the petitioner, an individual, got married to one Ratnaben and out of the wedlock a female child, named 'Varsha', was born on 23.12.1989 as per certificate of birth issued by Ahmedabad Municipal Corporation. It appears that Varsha appeared at the Secondary School Certificate Examination and on clearing the examination a

mark-sheet came to be issued by the respondent Board. The said mark-sheet bears the name KHANCHANDANI VARSHA SURATMAL. The case of the petitioner is that the correct name should be KHANCHANDANI VARSHA SOORAT. It is further stated by the petitioner that even in passing certificate same error has been committed.

4 On the basis of various documents like certificate of registration issued by the Ministry of Home Affairs whereunder the petitioner was registered as a citizen of India on 4.1.2000, passport issued by Government of India as well as affidavit dated 11.11.2006 and a X'erox copy of the telephone bill issued by Bharat Sanchar Nigam Limited, the petitioner moved the respondent Board for carrying out necessary corrections. According to the petitioner the respondent Board has failed to respond and hence the petition.

5 On behalf of the respondent No.2 Affidavit-in-Reply has been filed and it is stated in paragraph No.5 that the Board has not committed any error in mentioning the name of the petitioner either in the mark-sheet or in the Examination Certificate issued to the daughter of the petitioner because the said documents have been issued on the basis of general register which is maintained as per instructions which are filled up by the concerned school and the student. It is further stated that even the School Leaving Certificate issued by respondent No. 3 – School bears the name of the petitioner as SURATMAL. The respondent Board has also placed reliance on the Regulations, more particularly Regulation

No.12-A(6), to submit that no change is possible in the record of the school once the student has left the school. Admittedly the daughter of the petitioner had left the Secondary School, as respondent No.3 - School has already issued School Leaving Certificate. That the regulation in question has been framed with a view to ensure that illegalities and malpractices are curbed and unscrupulous persons do not take undue advantage by getting entries corrected in the school record subsequently. One more ground is to the effect that prior to appearing at the S.S.C. Examination the students are provided opportunity to correct their names, date of birth and other particulars at the time of pre-list and at the time of issuance of fee receipt/hall tickets. That the petitioner having failed to carry out such a correction at an appropriate time cannot claim any relief at this stage. That in the circumstances, the petition requires to be rejected.

6 In principle the stand of the respondent Board appears to be correct. However, one has also to bear in mind the requirement of enacting Regulation 12-A(6) of the Regulations. Once the said provision is meant for curbing malpractice and preventing unscrupulous persons from obtaining an advantage which such persons do not deserve, the respondent Board has also to take into consideration genuine cases wherein errors have occurred. One cannot lose sight of the fact that when human beings are involved in preparation and maintenance of records there is every likelihood that an error may occur by a slip of pen. Not only that, it is also not possible for a person to locate the error at a given point of time and such a lapse may occur for various reasons. However, for such

a lapse a genuine bonafide case where an error has crept in in the records cannot be thrown out only on the ground of technicalities. The respondent- Board must bear in mind that rules are meant to be of assistance and for the persons. The rules cannot override in all circumstances and in all fact situations. There has to be a distinguishing line, distinguishing between genuine and bonafide case and cases involving unscrupulous persons.

7 Reliance on the procedure which is adopted at the stage when the pre-list is prepared and the students are issued fee receipts/hall tickets to submit that the petitioner could have got necessary correction carried out at that stage may be an ideal situation. However, mere failure to have the necessary correction carried out at that stage by itself cannot dis-entitle a person from seeking such a modification/correction of the record only because of such lapse on part of such person. Moreover, a student who is preparing for the Board examination may not carefully scrutinise the name of the father.

8 If one examines the certificate of birth, the certificate of registration issued by Ministry of Home Affairs, Government of India registering the citizenship of the petitioner coupled with the passport of the daughter of the petitioner as well as affidavit dated 11.11.2006 prima facie it appears that the petitioner has been able to show that the record of the respondent Board requires modification. In the circumstances, the petitioner is directed to approach the respondent No.2 along with all the aforesaid documents as well as any further documents that the petitioner

may want to rely on for seeking necessary correction in the name of the petitioner in relation to record of respondent No.2 relating to daughter of the petitioner. Upon the petitioner so approaching, respondent No.2 shall carry out necessary correction in the records maintained by respondent No.2 including the mark-sheet and the examination certificate issued by respondent No.2 after verifying the genuineness of the documents presented before respondent No.2 by the petitioner. The petitioner shall approach respondent No.2 within a period of two weeks from today and respondent No.2 shall do the needful within a period of two weeks from the date of receipt of the application moved by the petitioner. It will be open to respondent No.2 to charge necessary fees, if any, in accordance with rules and regulations.

9 The petition is allowed accordingly in the aforesaid terms. Rule made absolute. Taking into consideration the facts and circumstances it would serve the ends of justice if the petitioner is directed to pay costs of this petition to respondent No.2 which are quantified at a sum of Rs.2500/-. Direct service permitted.

Sd/-
(D.A. Mehta, J)

m.m.bhatt